

**Remarks**Application Status and Disposition of Claims

This Amendment responds to the Office Action mailed November 27, 2009. In the Action, the Office considered claims 4, 7, 10, 11, and 18, and claims 1-3, 5, 6, 8, 9, 12-17, and 19-34, having been withdrawn from consideration as directed to a non-elected invention.

Applicants note that the Action does not consider claims 35 and 36 but it appears clear from the record that the Examiner intended to indicate that these claims were withdrawn, as they depend from withdrawn claims. Thus, Applicants treat these claims as withdrawn.

With this Amendment, Applicants amend claims 1-9, 18-27, and 36. Applicants note that sufficient written description support for the claims can be found in the specification and the previously filed claims, e.g., on page 19, lines 18-21; page 22, lines 22-27; and page 23, line 1. No new matter has been added.

Priority under 35 U.S.C. § 119

Applicants note with thanks that the Office has acknowledged Applicants' foreign priority claim. However, Applicants note that the Examiner has not acknowledged foreign priority in the Office Action Summary, nor has the Examiner acknowledged receipt of the certified copies of the priority documents. Applicants respectfully request that the Examiner acknowledge foreign priority and receipt of all priority documents on the Office Action Summary in the next Action.

Information Disclosure Statement

Applicants thank the Examiner for indicating consideration of the Information Disclosure Statements filed October 24, 2006, April 12, 2007, and June 21, 2007.

Restriction Requirement

The Office withdraws claims 1-3, 5, 6, 8, 9, 12-17, and 19-34, as drawn to a non-elected invention. Applicants allow claims 1-3, 5, 6, 8, 9, 12-17, and 19-34 (and 35 and 36) to remain pending, as they are subject to possible rejoinder.

Claim Objections

The Action objects to claims 4, 7, 10, 11, and 18 because they recite “to those of the protein having the amino acid sequence shown in SEQ ID NO: 1.” The Action recommends amending the claims to recite “to the protein having the amino acid sequence shown in SEQ ID NO: 1” because there is only one protein that has the amino acid sequence SEQ ID NO: 1.

In response, Applicants note that claims 1-9 and 18 have been amended to recite “to the protein having the amino acid sequence shown in SEQ ID NO.” Accordingly, reconsideration and withdrawal of the objection to claims 4, 7, 10, 11, and 18 is respectfully requested.

Claim Rejections – 35 U.S.C. §112, First Paragraph

The Action rejects claims 4, 7, 10, 11, and 18 under 35 U.S.C. §112, first paragraph for allegedly failing to comply with the written description requirement. The Action states that claims 4, 7, 10, 11, and 18 are drawn to a widely varying genus of DNA encoding any variants of

SEQ ID NO:1 (or SEQ ID NO:2) by deletion, substitution, and/or addition of any number of amino acid(s) (or nucleotide(s)).

In response, to advance prosecution and without expressing agreement or acquiescence to the propriety of the rejection, Applicants note that claims 1-9, 18-27, and 36 have been amended. In particular, claims 1-6, 18-24, and 36 have been amended to recite “a deletion, substitution, and/or addition of 1 to 20 amino acids.” Claims 7-9 and 25-27 have been amended to recite “a deletion, substitution, and/or addition of 1 to 60 nucleotides.” Applicants respectfully submit that subject matter contained in the claims is described in the specification in a way as to reasonably convey to one skilled in the relevant art that the inventors were, at the time the application was filed, in possession of the claimed invention.

In view of the foregoing, Applicants request that the rejection under 35 U.S.C. 112, first paragraph, be withdrawn.

Claim Rejections under 35 U.S.C. § 102(b)

The Action rejects claims 4, 7, 10, 11, and 18 under 35 U.S.C. §102(b) as allegedly being anticipated by Timms-Wilson et al. (Journal of Microbiological Methods, 2001, Vol. 46, pages 77-80). The Action alleges that the plasmid pUTgfp/lux disclosed in Timms-Wilson et al. meets the limitations of the claimed DNA and vector having appropriate number of deletions, substitutions, and/or additions from the nucleotide SEQ ID NO:2.

In response, to advance prosecution and without expressing agreement or acquiescence to the propriety of the rejection, Applicants note that claims 4, 7, 10, 11, and 18 have been amended. In particular, claims 4 and 18 have been amended to recite “a deletion, substitution, and/or addition of 1 to 20 amino acids with respect to the amino acid sequence shown in SEQ ID

NO: 1." Claim 7 has been amended to recite "a deletion, substitution, and/or addition of 1 to 60 nucleotides with respect to the nucleotide sequence shown in SEQ ID NO: 2." Thus, Applicants submit that Timms-Wilson et al. fails to teach all the features of the claimed invention.


In view of the foregoing, Applicants respectfully request that the rejection under 35 U.S.C. § 102(b) be withdrawn.

### CONCLUSION

In view of the foregoing remarks and amendments, Applicants respectfully request withdrawal of the objections and rejections of record and allowance of the claims. If the Examiner has any questions or wishes to discuss this application further, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

The Patent and Trademark Office is hereby authorized to charge Deposit Account No. 19-0089 any fee necessary to ensure consideration of the submitted materials.

Respectfully Submitted,  
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